

(UNOFFICIAL TRANSLATION)

Codified up to No. 2
As of 18 January 2012

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**Notification of the Capital Market Supervisory Board
No. Tor Khor. 3/2553
Re: Rules, Conditions and Procedures for Undertaking
Investment Advisory Business**

By virtue of Section 16/6 of the *Securities and Exchange Act B.E. 2535 (1992)*, as amended by the *Securities and Exchange Act (No. 4) B.E. 2551 (2008)*, Section 109 and Section 115 of the *Securities and Exchange Act B.E. 2535 (1992)* which contain certain provisions in relation to restriction of rights and liberties of persons which Section 29, in conjunction with Section 33, Section 34, Section 41, Section 43, Section 44 and Section 64 of the *Constitution of the Kingdom of Thailand*, so permit by virtue of law, the Capital Market Supervisory Board hereby issues the following regulations:

Clause 1 The *Notification of the Capital Market Supervisory Board No. Tor Khor. 68/2552 Re: Rules, Conditions and Procedures for Undertaking Investment Advisory Business and Appointment of Investment Advisory Agent* dated 3 August 2009 shall be repealed.

Clause 2 In this Notification:

- (1) “**investment advisory company**” means a securities company licensed to undertake securities business in the category of investment advisory services;
- (2) “**investor contact**” means any person who performs duties in contacting, soliciting, giving advice or planning related to the purchase or sale or investment in securities for investors. There are two categories of investor contacts which are Category A Investor Contact, who is allowed to conduct an analysis on the value or suitability of the purchase or sale or investment in securities, and Category B Investor Contact, who is not allowed to conduct an analysis on the value or suitability of the purchase or sale or investment in securities;
- (3) “**giving of advice**” means any giving of advice, whether directly or indirectly, concerning the value of securities or the suitability of making investment related to such securities or the purchase or sale of any securities;
- (4) “**client**” means a person who agrees to receive advisory services from an **investment advisory company**;
- (5) “**foreign securities business operator**” means any person licensed to undertake securities business by a regulatory agency on securities and securities exchange in a foreign country which is a member of the International Organization of Securities Commissions (IOSCO);
- (6) “**collateral**” means a collateral for compensation of damage incurred to **clients** from incorrect or incomplete performance of duties of an **investment advisory company**, which includes:
 - (a) insurance policy of an insurance company;

(b) letter of guarantee issued by commercial banks, finance companies, or financial institutions established under specific law;

(c) any other *collateral* as specified by the SEC Office.

(7) “*liquid asset*” means any of the following assets which are free from any encumbrance:

(a) cash and bank deposit;

(b) certificate of deposit or promissory note issued by commercial banks, banks established under specific law, finance companies or credit foncier companies;

(c) treasury bill, government bond, state enterprise bond, Bank of Thailand bond, Financial Institutions Development Fund bond and bond or debt securities issued by the Ministry of Finance;

(d) any other liquid asset specified by the SEC Office.

Clause 3 In providing investment advisory service, an *investment advisory company* shall undertake at least the following actions:

(1) providing work systems that demonstrate its readiness for the undertaking of investment advisory business as approved by the SEC Office, including an internal control system related to the *giving of advice* and a system for monitoring investments of the *investment advisory company* and its employees;

(2) providing a compliance supervisor of the *investment advisory company* to be in charge of the issuance of rules related to prevention of conflicts of interest and internal control of such *investment advisory company*, as well as supervise *investor contacts* in their compliance with the law, relevant notifications and standards of professional conduct;

In cases where the *investment advisory company* intends to change the work systems as approved by the SEC Office under Paragraph 1, the *investment advisory company* shall give a prior notice in writing to the SEC Office. Unless the SEC Office gives any objection in writing within fifteen days as from the date of receiving the prior notice, the *investment advisory company* may change such work systems.

Clause 4 In providing investment advisory service, an *investment advisory company* shall maintain either *collateral* or *liquid assets* or both in adequate value as specified by the SEC Office and calculate and report the maintenance of *collateral* and *liquid assets* adequacy in accordance with the rules and procedures specified by the SEC Office.

The provisions under Paragraph 1 shall not apply to an *investment advisory company* which has been licensed to undertake other categories of securities business prior to the date of filing an application for a securities business license in the category of investment advisory service and shall not apply to an *investment advisory company* which falls under the following types of juristic person:

(1) a commercial bank or finance company under the law on financial institution business;

(2) a life insurance company under the law on life insurance; and

(3) a financial institution established under specific law.

Clause 5 Without imposing restriction on the power of the Capital Market Supervisory Board under Section 143 to order otherwise, an *investment advisory company* under Clause 4 which is unable to maintain adequate *collateral* and *liquid assets* as specified by the SEC Office shall take the following actions:

(1) preparing a report on the inadequacy of *collateral* and *liquid assets* as per the form provided in the SEC Office's electronic work system and submitting the report to the SEC Office within the following two business days;

(2) rectifying to maintain the adequacy of the *collateral* and *liquid assets* as required for a period of no less than seven consecutive business days, within thirty days as from the date on which it is unable to maintain such adequacy, and informing the SEC Office of such rectification within two business days as from the date of rectification.

Clause 6 During the period in which the *investment advisory company* under Clause 4 is unable to maintain the adequacy of *collateral* and *liquid assets* or is in the process of making rectification to maintain the adequacy under Clause 5(2), the *investment advisory company* shall be prohibited to undertake the following actions until it is able to maintain the adequacy in accordance with the prescribed rules:

(1) provision of services for a new *client*;

(2) extension of the period of providing services to existing *clients*;

(3) undertaking any other action as specified by the SEC Office.

Clause 7¹ *Repealed.*

Clause 8 In order to ensure that the *giving of advice* is correct and consistent with the objectives and demands of *clients*, an *investment advisory company*, in contacting and soliciting *clients* to become a counterparty for advisory service related to the purchase or sale or investment in securities, shall:

(1) prepare *client*'s information and arrange for giving of appropriate advice by taking into account the *client*'s investment objective, knowledge and understanding related to investment, acceptable risks and other factors. The *investment advisory company* shall solicit such information from the *client* for making a consideration;

An agreement for provision of investment advisory services shall specify the *client*'s right to receive clear and sufficient information relating to the provision of investment advisory services. In addition, any term or condition which may cause any conflict of interest between the *client* and the *investment advisory company* and its related persons as prescribed by the SEC Office shall require the *client*'s consent.

(2) disclose or proceed to disclose the information necessary for making investment decisions sufficiently and within an appropriate period of time. In this regard, the information shall be correct and up-to-date and shall not have any characteristics that mislead or distort facts.

¹ Repealed by the *Notification of the Capital Market Supervisory Board No. Tor Thor. 6/2555 Re: Rules, Conditions and Procedures for Undertaking Investment Advisory Business* (No. 2) dated 18 January 2012 (effective on 1 April 2012).

Clause 9 In cases where the *investment advisory company* arranges for the *giving of advice to clients* which is undertaken by a *foreign securities business operator*, such *investment advisory company* shall proceed as follows:

(1) consider and select a *foreign securities business operator* which is competent and reliable in giving advice in compliance with the law regulating business undertaking in such foreign country;

(2) inform the *foreign securities business operator* of the rules related to the *giving of advice* under the law governing securities and exchange;

(3) inform the name and address of such securities business operator to allow *clients* to make contact or enquiry related to the *giving of advice*; and

(4) comply with the rules related to the translation of analysis report as determined by a securities business-related organization which is acceptable to the SEC Office.

Clause 10 An *investment advisory company* shall keep documents and evidence related to the *giving of advice* on securities investment as follows:

(1) evidentiary documentation related to the *giving of advice* on securities investment shall be kept for at least two years as from the date on which they are given to *clients* in the manner which is immediately available upon the SEC Office's request for a review or inspection. In cases where the *giving of advice* by a *foreign securities business operator* is provided, the *investment advisory company* shall keep the documents relating to the *giving of advice* including the analysis reports and any other documents supporting the *giving of advice* for at least two years as from the date on which such advice is given in Thailand;

(2) audio recording tapes or electronic recording media related to the *giving of advice* shall be kept for at least three months as from the date on which the advice is given. However, should there be any customer's complaint relating to the *giving of advice* whose proceeding has not been completed within such period, the relevant audio recording tapes or electronic recording media shall be kept until the handling of such complaint is completed.

Clause 11 All notifications of the SEC Office of the Securities and Exchange Commission, orders and circulars issued under, or prescribing guidelines for compliance with, the *Notification of the Securities and Exchange Commission No. Kor Nor. 23/2544 Re: Rules, Conditions and Procedures for Undertaking Investment Advisory Business and Appointment of Investment Advisory Agents* dated 14 September 2001 which have been in effect prior to the effective date of this Notification shall remain in full force to the extent that they are not inconsistent with nor contrary to the provisions of this Notification until notifications, orders and circulars issued under, or prescribing guidelines for compliance with, this Notification come into force.

Clause 12 Any reference made in any other notification to the *Notification of the Securities and Exchange Commission No. Kor Nor. 23/2544 Re: Rules, Conditions and Procedures for Undertaking Investment Advisory Business and Appointment of Investment Advisory Agents* dated 14th September 2001 shall mean reference to this Notification.

Clause 13 This Notification shall come into force as from 1 February 2010.

Notified this 1st Day of February 2010.

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(Mr. Thirachai Phuvanatanarubala)
Secretary-General
Office of the Securities and Exchange Commission
Chairman
Capital Market Supervisory Board

Remark: The reasons for promulgation of this Notification are to (1) modify the rules on the undertaking of investment advisory business and the rules on the undertaking of derivatives business for licensed derivative advisors to be consistent and (2) prescribe guidelines for the arrangement of an investment advisory company for the giving of advice by foreign securities business operators to retail investors in Thailand including the maintenance of documents related to such giving of advice.